

**OPINION  
60-68**

September 23, 1960        (OPINION)

COUNTY FAIRS

RE: Levy in Aid of - Submission to Voters

Under date of September 13, 1960, you inquired of this office regarding section 4-0230 of the North Dakota Revised Code of 1943 which was amended in 1947. Your inquiry is as follows:

Your opinion is respectfully requested on the following question: Does section 4-0230 of the 1957 Supplement to the North Dakota Revised Code of 1943 authorize the submission of the question of continuing the annual levy in aid to an agricultural fair to a vote of the people of the county at the next general election, whereas such question was submitted to the people and rejected at the last general election?"

You give the facts as follows:

The McLean County Fair Association was organized and a first year's grant of aid tax not exceeding one-half of one mill was levied by the Board of County Commissioners in accordance with section 4-0226, N.D.R.C. of 1943, in 1958. Subsequently, the question of continuing the annual levy was submitted to the voters at the general election in 1958 and was defeated.

Presently, the County Commissioners are in favor of submitting such question to the voters again at the forthcoming election."

Section 4-0230 of the North Dakota Revised Code of 1943 states as follows:

TAX PROVIDED FOR TO BE SUBMITTED TO VOTE. Whenever the board of county commissioners shall have voted and ordered a tax levied in aid of an agricultural fair, at the next general election the question of continuing the annual levy and collection of the tax shall be submitted to a vote of the people of the county. The county auditor shall certify and give notice of the submission of the question as in such cases provided by law. The ballots to be used at the election shall be in the following form:

Yes    ›    !

For tax in aid of county fair

No › !

In voting upon the question, any elector in favor of continuing the tax shall place a cross in the square marked 'yes' and any elector opposed to continuing the tax shall place a cross in the square marked 'no'. If a majority of the ballots cast at the election is in favor of continuing the tax, the board of county commissioners may continue to levy the tax annually, but if a majority is against levying the tax, the board of county commissioners thereafter shall not levy any tax under this chapter. The question of whether or not such tax shall be levied may be submitted by the board of county commissioners to the electors of the county at any general election, but the result of any election held under the provisions of this chapter shall remain in force until changed at some subsequent election."

This section was amended by chapter 2 of the 1947 Session Laws and reads as follows:

TAX PROVIDED FOR TO BE SUBMITTED TO VOTE. Whenever the board of county commissioners shall have voted and ordered a tax levied in aid of an agricultural fair, at the next general election the question of continuing the annual levy and collection of the tax shall be submitted to a vote of the people of the county. The county auditor shall certify and give notice of the submission of the question as in such cases provided by law. The ballots to be used at the election shall be in the following form:

Yes › !

For tax in aid of county fair

No › !

If a majority of the ballots heretofore or hereafter cast on the question at any such election is in favor of continuing such tax, the board of county commissioners shall continue the annual levy hereof as long as the provisions of section 4-0229 are complied with and until otherwise directed as herein provided.

Whenever a petition addressed to such board, asking the discontinuance of such tax and containing the signatures of the qualified electors of the county in a number equal to twenty percent of the total vote cast in the county at the last preceding general election, is filed in the office of the county auditor, the board shall submit to the electors of the county at the next succeeding general election the question of whether or not the levying of such tax shall be continued. The ballot shall be in the following form:

Yes › !

Shall the board of county commissioners continue the annual levy of a tax in aid of county fair?

No > !

If a majority of all the ballots cast at such election is in favor of discontinuing the tax, the board of county commissioners shall not thereafter levy any tax under this chapter.

Before every such election, the county auditor shall certify and give notice of the submission of the question as in such cases provided by law."

Chapter 2 amendment is an act to amend and reenact section 4-0230 of the North Dakota Revised Code of 1943 providing for submitting to electors the question of continuing and discontinuing annual tax levy in aid of agricultural fairs, and declaring an emergency. You will note this law involves the right to levy taxes and how to make such levy. The old law, section 4-0230 of the North Dakota Revised Code of 1943 provides in part as follows:

The question of whether or not such tax shall be levied may be submitted by the board of county commissioners to the electors of the county at any general election, . . . ."

This part of the law was left out of the amendment, as you will notice and in place thereof states as follows:

If a majority of all the ballots cast at such election is in favor of discontinuing the tax, the board of county commissioners shall not thereafter levy any tax under this chapter."

Since the only authority for levying taxes for subsequent years was mentioned in the old law, the question of whether or not such taxes shall be levied may be submitted by the county commissioners to the electors at any general election. When this is left out of the new law, it naturally repealed the law with reference to it, but not only that, the new law provides that if a majority of all the ballots cast at such election is in favor of discontinuing the tax, the board of county commissioners shall not thereafter levy any tax under this chapter.

It is therefore the opinion of this office that the county commissioners may not authorize the submission of the question of continuing the annual levy in aid to an agricultural fair to a vote of the people of the county at the next general election.

For law in the matter see the case of *Posadas v. National City Bank*, 80 L. ed. 355, column one, which reads as follows: "If the later Act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier Act." See also the case of *State of Oklahoma v. Charles McCafferty*, 25 Okla. 2, 105, LRA 1915A.

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